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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

Voyager -201

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on March 20, 2007

Signature SHR

Typed or printed name STEVEN M. HOFFBERG

Application Number

09/767,126

Filed

Jan. 22, 2001

First Named Inventor

Daman, Willem

Art Unit

3624

Examiner

Felten, Daniel S.

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

applicant/inventor.

assignee of record of the entire interest.

See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

attorney or agent of record.

Registration number 33,511

attorney or agent acting under 37 CFR 1.34.

Registration number if acting under 37 CFR 1.34 _____

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March 20, 2007

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below*.



*Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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VOYAGER 201

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Daman, et al.
Serial No. : 09/767,126
Filed : January 22, 2001
For : REAL TIME ELECTRONIC COMMERCE TELECOMMUNICATION
SYSTEM AND METHOD
Examiner : Felten, Daniel S.
GAU : 3624

March 20, 2007

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

In response to the Office Action dated October 20, 2006, the time for response to which expires January 22, 2007, having been extended by Petition and payment of the appropriate fee to and including March 20, 2007, applicants hereby request a Pre-Appeal Brief Conference in the above-identified application.

REMARKS

Claims 1-37 are in the application.

Claims 1-37 are rejected under 35 USC 103(a) as being obvious over Friedland et al. in view of Alaia (US 6,230,146).

Friedland et al. is cited for the proposition that an Internet-based multiple unit declining price auction (e.g., the Dutch Auction) was known prior to the invention. Clearly, the Dutch Auction was well known. However, the application of this technology to the Internet is not without its problems, as noted by Friedland et al. First, the Internet and its underlying protocols do not guaranty delivery of any packets, making an implementation of a time-critical offer-acceptance transaction difficult. Likewise, while error detection and correction, as well as packet delivery confirmation and retransmission aspects of the protocols can ensure that, so long as the communication link is open, the message eventually gets through, it cannot guaranty that this occurs in real-time. Thus, packets sent earlier may be received later. Alaia et al. do not remediate the deficiencies of Friedland et al.

Claims 1-37 each relate to a method, and therefore it is respectfully submitted that the Examiner's interpretation of claim language as being a "statement of intended use" is incorrect. These are, in fact, affirmative statements of function. Thus, for example, "each local server communicating with at least one respective remote location, each local server altering a format of information communicated between a remote location and the central server" is an express statement of function, and therefore an express limitation, of the method claim 1.

In the context of a time-based declining price auction, real time communications, or at least a mechanism for compensation for possible time delays, are critical, in order to assure fairness. However, normal web browsers, without ancillary programming logic, have no means for implementing these compensations (without opening the auction process to the possibility of fraud). The present invention, therefore proposes an architecture which provides an intermediary "remote server" which permits a local client to employ a traditional web browser, without particular modification or add-ons, to interact with the central server. Once the remote server is provided, it may perform a variety of functions. For example, it may convert the format of communicated information, such as by compressing, reformatting, translating, or otherwise altering a format of the data. Thus, while a web browser client expects to interact with a server by means of a hypertext markup language protocol, e.g., "http://", the communication between

remote server and central server need not conform to this specification, and indeed may adopt a different and/or more optimal protocol. The remote server may maintain clock synchronization with the central server, and thus reliably time-stamp packets. This distinction from the prior art is expressed in the following language in claim 1: "wherein remaining quantity information and bid identification information are communicated between the central server and a plurality of local servers, each local server communicating with at least one respective remote location, each local server altering a format of information communicated between a remote location and the central server."

Another advantage of the remote server is that it is capable of performing logical operations, and therefore may interact directly with the remote location, e.g., web browser, without acting as a simple proxy for communications from the central server. Thus, the remote server may implement a set of rules, such as time-based rules, to offload the central server of functionality that may be decentralized. Claim 21 thus includes the step of: "implementing the set of rules of transaction proximate to a client for ensuring compliance with each of said rules".

~~Claim 6 requires the step of "receiving bid identifications for remaining units within the lot at the contemporaneous offering price from the plurality of remote locations by communicating between a set of users and a plurality remote servers at respective remote locations to interactively define the bid identifications, and communicating the defined bid identifications between the remote location and the central server substantially without interactive communications directly between the user and the central server". This step requires an *interactive* relationship between the users and remote servers, a relationship not taught or suggested by the art. That is, neither Friedland et al. nor Alaia et al. teach or suggest that the local server itself responds to the user, but rather that it "serves to efficiently collect and filter bids from a large number of remote bidders and pass potentially winning bids onto the auction server, and also to serve to efficiently broadcast status messages concerning the live auction received from auction server to a large number of remote client programs running on remote computers." Friedland et al., Col. 3, lines 24-29. According to Friedland et al., the "collector/redistributor nodes are heirarchically interconnected and serve to efficiently collect and filter bids from a large number of remote bidders and pass potentially winning bids onto the auction server, and also serve to efficiently broadcast status messages concerning the live auction received from the auction server to a large number of remote client programs running on remote~~

computers.” In the present case, *interactively* means that the local server itself generates a response to the user without requiring a separate communication for the purpose of defining that response to the central server. It is respectfully submitted that, in accordance with any reasonable an appropriate definition of “interactive” or its associated adverb, “interactively”, the present claim 6, and therefore the remaining claims, distinguish the art.

Claim 7 requires that “the remote server communicates with a user by means of a hypertext language protocol.” Friedland et al. do not disclose the use of this protocol, and indeed Friedland et al. discloses that the “DLA auction console consists of a Java 1.02 applet running in a web browser, either Internet Explorer or Netscape Navigator/Communicator.” That the browser itself, whose native language is HTML, is insufficient, and requires an applet, tends to indicate that the protocol is NOT a hypertext language protocol. Note that Friedland et al. does not disclose the protocol employed, nor teach or suggest that a hypertext markup language be employed.

As discussed in the specification, the time of receipt of a bid may differ from the time of bidding. In order to make the auction fair, those bidders with superior communications infrastructure should not on that basis alone have a bidding advantage. Thus, the time of bid is used as an award criterion. On the other hand, the time of bidding is derived from a clock at the remote location, which may be subject to alteration or error. That is, the local clock may be intentionally mis-set or tampered with, resulting in a possible advantage. Claim 8 requires the steps of: “automatically maintaining synchronization of a clock at each remote location and receiving at the central server bid identifications for remaining units within the lot at the contemporaneous offering price associated with a time of bid identification from the plurality of remote locations;” and “decrementing the offering price over time and decrementing the quantity of remaining units, prioritizing award of units based on the time of bid identification, if received within a bid time window...” Nothing in Friedland et al. teaches or suggests that the remote location has a clock, let alone one which is synchronized. Friedland et al. suggests that it is possible to conduct a reatime auction, and does not discuss time lags and the like. Thus, in contrast to the present invention, Friedland et al. maintains a single central timebase, in contrast to the invention set forth in claim 8, which has a distributed synchronized timebase. This feature is not taught or suggested by the references. The Examiner’s analysis in the office action is

incomplete, ending in a sentence fragment, and is insufficient as presented to support the rejection.

Claim 14 provides that: “over a period of time, generally relaxing a limiting restriction on acceptable transaction parameters for the subject, and prioritizing an award of a quantity of subject to a respective buyer based on a sequence of generation of bids, if received within a bid time window, wherein the sequence is determined based on an automatically synchronized timebase, which maximizes a seller utility...” Friedland et al. describe Dutch Auctions as follows: “Dutch auctions, by contrast, start with a high price that is decreased incrementally by the auctioneer until the auctioneer obtains a first, winning bid.” There is no teaching or suggestion here, or anywhere else in Friedland et al., that there is an “automatically synchronized timebase”. On a more subtle note, the present claim makes the distinction between the time of bid and the time of receipt of bid, which are different by the amount of transmission latency. While in some instances, this difference is small, in others, it can be significant to affect the outcome of an auction, and therefore the method according to the present invention will achieve a substantially different result than the prior art where transmission latencies are a factor.

It is therefore respectfully submitted that the Examiner has failed to establish a prima facie case of obviousness, since the references alone or in combination, fail to teach each and every limitation of the claims, and further fail to provide any teaching, suggestion or motivation to modify the teachings to achieve the present invention.

Respectfully submitted,



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